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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT,
Petitioners

v.

DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTION PRESENTED

Must the Government of the District of Columbia be presumed to have concurrent jurisdiction with Congress over property within the geographic boundaries of the District of Columbia, including federally-owned areas used exclusively for the national government, such that the District Government may levy personal property taxes under D.C. Code § 47-1507 against personalty located in such exclusive federal enclaves?

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a to 11a)[1] is reported at 448 A.2d 261 (1982). No opinion was issued to accompany the Order of the Superior Court of the District of Columbia, Tax Division (Pet. App. 12a to 13a). The denials of Petitioner ITEL Corporation's tax refund claims by the District of Columbia Department of Finance and Revenue are unpublished (Pet. App. 14a to 15a).

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[1] "Pet. App." refers to the appendix attached to this Petition for Writ of Certiorari.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a to 11a) was entered on July 21, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. I, § 8, cl. 17 of the U.S. Constitution provides that [Congress shall have the power]:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

Section 47-1507 of the D.C. Code (1981) provides:

> On all tangible personal property, assessed at fair cash value (over and above the exemptions provided in § 47-1508), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the Collector of Taxes of the District of Columbia the rate of tax provided by law. Effective July 1, 1972, the rate of tax applicable to the average stock-in-trade of dealers in general merchandise shall be two-thirds of the rate of tax established by the Council of the District of Columbia for application generally to personal property subject to taxation for the fiscal year ending June 30, 1972; and effective July 1, 1973, the rate of tax applicable to the average stock-in-trade of dealers in general merchandise shall be one-third the rate of tax established by the Council of the District of Columbia to be applied generally to personal property subject to taxation for the fiscal year ending June 30, 1972; and effective July 1, 1974, the tax on the average stock-in-trade of dealers in general merchandise is repealed.

STATEMENT OF THE CASE

A. Factual Background

This case arises out of the denial by the Department of Finance and Revenue of the Government of the District of Columbia of claims by Petitioner ITEL Corporation (ITEL)[2] for refund of certain personal property taxes paid by ITEL pursuant to assessments by the government of the District of Columbia (District Government) under D.C. Code § 47-1507 (1981)[3] in the tax years 1978, 1979 and 1980. These tax payments, totaling $500,261.27 over the three year period, were made as a result of levies against personal property owned by ITEL and leased to the United States for its use. Critical to this action is the fact that, at all times relevant to the ITEL tax refund claim, the taxed personal property was located in buildings owned by the United States and on real property owned by the United States, that is, located in exclusive federal enclaves within the District of Columbia.

ITEL's claim for a refund of District of Columbia personal property taxes was timely filed with the Department of Finance and Revenue pursuant to D.C. Code § 47-3310 (1981) (formerly § 47-2413). This claim was based on ITEL's assertion that the District Government is without authority to assess such personal property

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[2] These claims for refund were filed by ITEL on its own behalf and on behalf of the United States Trust Company of New York. Due to certain financing arrangements entered into by ITEL, title to some of the personal property against which the disputed taxes were assessed was held by United States Trust Company of New York during fiscal years 1978 and 1979. However, ITEL holds the rights to all tax refunds related thereto, and all references to ITEL's property or claims hereafter include those which were formerly held by United States Trust Company.

[3] At the time of the assessment of the taxes under dispute, this section was codified as D.C. Code § 47-1207 but was recodified as referenced above in 1981.

taxes against property located in buildings in exclusive federal enclaves. Such federal areas within the District are under the sole control of congress, and the District Government may exercise authority in these areas only where Congress has explicitly consented to such exercise. There is no explicit consent related to the D.C. Code § 47-1507 personal property tax.

In support of its claim, ITEL relied upon the United States Constitution, Art. I, § 8, cl. 17, several Congressional enactments applicable, in whole or in part, to the District of Columbia, and various judicial interpretations of the nature of exclusive federal jurisdiction and the rules of construction applicable thereto. These grounds for refund were also asserted by ITEL in its petition to the Superior Court of the District of Columbia, Tax Division, appealing the Department of Finance and Revenue denial of the refund claims, and again to the District of Columbia Court of Appeals in the action resulting in the judgment below.

B. The Nature of The District of Columbia Government

This case involves the nature and extent of the governmental authority delegated by Congress to the District Government. Although recent enactments, particularly the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774, *et seq.* (the Home Rule Act), reflect the limited scope of the District Government's authority, this municipal, purely local mandate has been evident throughout the District's history.

1. The District of Columbia was created pursuant to Art. I, § 8, cl. 17 of the United States Constitution, by which Congress was granted power of "exclusive legislation" over the area which was to become the "Seat of the Government of the United States," and the Act of July 16, 1790, 1 Stat. 139, by which Congress accepted the cession from the states of Maryland and Virginia of

certain territory, located on the Potomac River, which became on the first Monday in December, 1800, the nation's capital. Although Congress was granted the power of "exclusive legislation" over such area,[4] the Act of July 16, 1790, provided that the laws of Maryland and Virgiina applicable to the lands which became the District of Columbia would continue in force after the creation of the District, and that the Federal Government would acquire over time, by purchase or otherwise, "such quantity of land on the eastern side of said [Potomac] River, within the said District, as the President shall deem proper for the use of the United States . . . ." 1 Stat. 139. Accordingly, local control and previous private ownership of land within the District continued except to the extent that portions of the District real property were so acquired by the national government. Such federally acquired property came under *exclusively* Congressional control. *Metropolitan Railroad Company v. District of Columbia*, 132 U.S. 1 (1889).

2. By the Act of May 3, 1802, 2 Stat. 195, Congress incorporated the "City of Washington" and delegated to the city's Mayor and common council certain limited powers related to the administration of local matters and maintenance of local facilities and safety. This loosely organized local governmental structure was "strictly municipal in its character" and dealt with purely local matters. Congress retained the sole responsibility for protection and maintenance of federal buildings and grounds. *Id.*, 132 U.S. at 233.

By the Organic Act of February 21, 1871, 16 Stat. 419, the local government became the municipal corporation, the District of Columbia. This evolution in the legal identity of the local government did not expand the scope

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[4] "Exclusive legislation" is now generally referred to as exclusive jurisdiction. See Surplus Trading Company v. Cooke, 281 U.S. 674 (1930).

of District Government responsibility;[5] the municipal government continued to act without day-to-day Congressional supervision as administrator of laws passed by Congress concerning *local* matters in the District, with the Federal Government retaining responsibility for maintenance and control of federal land and facilities.[6] *District of Columbia v. John R. Thompson Company, Inc.*, 346 U.S. 100, 111 (1952). However, the District Government was a separate legal and political entity, distinct from the national government from which it drew, and continues to draw its municipal authority. *Metropolitan Railroad Company v. District of Columbia, supra*, 132 U.S. at 234.

3. In 1973, by the Home Rule Act, Congress delegated to the District substantial authority to legislate independently with regard to local matters. 87 Stat. 785-792. The Home Rule Act policy statement provides:

> [T]he intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by registered qualified electors in the District

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[5] See Stoutenburgh v. Hennick, 129 U.S. 141 (1889). The principal purpose of the 1871 enactment was the delegation to the local government of authority to legislate in purely local matters. This self-governing authority was rescinded, however, by the Act of June 20, 1874, 18 Stat. 116.

[6] For example, control of the Capitol grounds was, and continues to be vested in the Architect of the Capitol, except that the District Government may enter the Capitol grounds to maintain certain roads or repair utilities, or, *with the approval of the Architect*, to construct or alter utility services. D.C. Code § 9-106 (1981); 40 U.S.C. § 193a. *See also* 40 U.S.C. § 184a(d), which directs the transfer of jurisdiction over certain real property from the District Government to the Architect, which property is to be used for a new Congressional Page School, and 3 U.S.C. § 202 (Secret Service, Uniformed Division) and D.C. Code §§ 4-201-208 (Park Police) and 9-115 (1981) (Capitol Police) establishing separate police forces for federal areas within the District.

> of Columbia; *grant to the inhabitants of the District of Columbia powers of local self-government*; ot modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and *to the greatest extent possible*, consistent with the constitutional mandate, *relieve Congress of the burden of legislating upon essentially local District matters.* [emphasis added]

87 Stat. 777. This statement reflects the intent of Congress to continue the exclusively local nature of the District Government authority.

Similarly, the Home Rule Act reflects the continued withholding of District authority in exclusively federal areas. Specifically, the Home Rule Act designated a "National Capital Service Area" (the Service Area), an exclusive federal enclave encompassing the area from the Capitol grounds to the White House, 40 U.S.C. § 136, and provided a mechanism by which the Federal Government could enter into agreements with the District Government for the provision to that area of services which the District Government would not otherwise provide because the area was outside its local governmental responsibilities. 87 Stat. 820, 822.[7]

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[7] When introducing the amendment to the Home Rule Act which created the National Capital Service Area, Representative Green of Oregon stated: "The amendment itself intends to include *all of the Federal land but it does not include one area of private land*—not one acre. . . . [Washington, D.C.] was intended as a city that would be different from all other cities in the country . . . the nation's Capital should be ever preserved as just that—*under federal control—not local*—and belonging equally to those residents three miles away or residents of Florida, Alaska or Iowa.

Under this kind of a Federal City, the President would appoint a Director of Federal Area Services who would be responsible for police protection, fire protection, sanitation, the streets and access roads." (Emphasis added) 119 Cong. Rec. H8831 (1973).

The Home Rule Act continued in force previous Congressional enactments related to the District of Columbia, 87 Stat. 820, but expressly prohibited the District Government from enacting any new law "which concerns the functions or property of the United States." 87 Stat. 813-814. In sum, although the Home Rule Act authorized the District Government to legislate for local areas of the District (areas owned or controlled by private individuals or the District Government itself), it also reinforced the historical limitation on the authority and responsibility of the District Government to act in matters concerning exclusive federal enclaves.

4. Finally, judicial review of the authority of the District Government has consistently affirmed its municipal character. It has also reflected the need to interpret Congressional delegations of authority to the District Government as subject to the limitations of authority on the several states vis-a-vis federal functions and activities. Thus, in *Stoutenburgh v. Hennick, supra*, this Court held that the District Government could not enforce licensing provisions in a manner which imposed a burden on interstate commerce. Similarly, in *District of Columbia v. John R. Thompson, Company, Inc., supra*, the police power delegable to the municipal District Government was held to be "as broad as the police power of the state." 346 U.S. at 109. More recently, in *General Motors Corp. v. Districts of Columbia*, 380 U.S. 553 (1965), the restrictions imposed on states for apportionment of income were used to interpret the District corporate income tax laws, and in *United States v. District of Columbia*, 669 F.2d 738 (D.C. Cir. 1981), the U.S. Court of Appeals specifically found that the Congressionally-enacted District sales and use tax authority was intended "to limit the District's taxing power in the manner that State taxation authority is limited." 669 F.2d at 746.

C. The Court of Appeals Opinion

The Court of Appeals below held that the District of Columbia personal property tax authorized under D.C. Code § 47-1507 "is applicable to privately-owned personalty located on federally-owned land in the District." (Pet. App. 1a). The Court of Appeals decision relied principally on the general language of this taxing statute and the absence of an explicit exemption for such personal property in D.C. Code § 47-1508. (Pet. App. 3a).

1. The judgment of the Court of Appeals was based on its conclusion that the District Government has jurisdiction concurrent with that of the Federal Government with regard to *all* geographic areas of the District, whether federally or privately owned. As the Court stated: "Absent a contrary indication in the legislative history, a general statute [for the District] is to be applied to private parties throughout the District, *regardless of whether the locale of the relevant conduct or personal property is federal or private land.*" (Emphasis added). (Pet. App. 11a, n.10). The Court of Appeals ruled, in effect, that questions regarding the authority of the District Government are to be resolved applying a presumption favoring a delegation of control and authority to the District Government.

2. The Court of Appeals' analysis specifically rejected, as a matter of law, the possibility that acts of the District Government could improperly interfere in any way with federal activities within the District if those acts were undertaken pursuant to laws passed by Congress. In the context of legislation concerning the District Government, it found inapplicable the rules of strict statutory construction fashioned by the courts since *M'Culloch v. Maryland*, 17 U.S. 316 (1819) when determining the scope of Congressional consent to impingement upon the exclusivity of federal jurisdiction. *United States v. Unzueta*, 281 U.S. 138 (1930); *Van Brocklin v. Anderson*, 117 U.S. 151 (1886). The court below simply found:

> The tax at issue here was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government [footnote omitted], but by the Congress itself. It can hardly be said that this amounts to an intrusion on federal perogatives.

(Pet. App. 4a).

3. The court below also noted that the creation of the Service Area by Congress in the Home Rule Act had no relevance to the issue of whether Congress intended to preserve the exclusivity of its control over wholly federal areas within the District of Columbia, and the opinion does not address the extensive Home Rule Act legislative history which would limit the authority of the District Government. Similarly, the court did not reconcile its finding of District-wide concurrent jurisdiction between Congress and the District Government with provisions in the United States Code related to transfers of jurisdiction over real property in the District of Columbia between those two governmental entities. *See* 40 U.S.C. §§ 122 and 184a(d). Finally, the court found significant support for its holding in the fact that no issue related to exclusive federal jurisdiction was raised or addressed by this Court in the recent case of *United States v. New Mexico*, 102 S. Ct. 1373 (1982).

REASONS FOR GRANTING THE PETITION

The court below created a presumption that the District Governemnt has jurisdiction concurrent with that of Congress over *all* geographic areas of the District on matters within the scope of general Congressional delegations of authority. In so holding, the Court of Appeals created a rule of interpretation of statutes related to the District of Columbia which runs contrary to established principles of law and statutory construction, and thereby threatens to alter the fundamental nature of the relation-

ship between the District Government and the Federal Government.

1. It is a long established rule of law that delegations of authority to municipal bodies are to be strictly construed. *Atkin v. State of Kansas*, 191 U.S. 207 (1903). The Court of Appeals holding reverses this rule for such delegations to the municipal District Government.

2. This Court has repeatedly found that, where a lesser Governemnt seeks to tax even a private party within an exclusively federal enclave, that exercise of taxing power must be denied in the absence of express Congressional consent to the tax levy. *Humble Pipeline Co. v. Waggoner*, 376 U.S. 369 (1964); *Surplus Trading Co. v. Cooke*, 281 U.S. 647 (1930). Without addressing the principle that the national government must be free from unwanted interference by lesser governmental entities, the Court of Appeals rejected such a rule of construction. The decision below makes interference with the national government by the District Government essentially a legal impossibility, thereby forcing Congress to retrieve its exclusive authority legislatively, on a case-by-case basis, so as to accommodate the needs of the national government. Moreover, the need for Congressional clarification of District Government authority cannot be met through Congress' power, under § 602(c) of the Home Rule Act, 87 Stat. 814, to veto City Council actions because the court's presumption relates to existing Congressional enactments, not new legislation.

For example, relying on the Court of Appeals' presumption of authority, the District Government can now reasonably assert the power to tax all personalty not expressly exempt under D.C. Code § 47-1508 (1981).[8] This

[8] D.C. Code § 47-1508 exempts only personalty of certain nonprofit organizations, certain works of art, certain motor vehicles and "household belongings" not used in "the engaging or carrying on of any trade, business, profession, location, calling, rental property,

will result in the taxation of privately-owned personal property used in carrying on the professional work of members of Congress and located in their Congressional offices, of Government workers in their offices, of military personnel in their offices at installations such as Bolling Air Force Base and Fort McNair, and of members of the federal judiciary. Equally significant, the District Government can now rely upon the similar absence of an exemption for *federal* personal property in D.C. Code § 47-1508, together with the explicit exemption for federal real property in D.C. Code § 47-1002 (1981) and the explicit exemption in the predecessor District of Columbia personal property tax statute (Act of March 3, 1877, 18 Stat. 396), to authorize the taxation of federal personal property.

3. The most recent Congressional expression of intent related to the authority of the District of Columbia over federal areas appears in the legislative history of the Home Rule Act. Specifically, though the Committee reports are silent on this issue, the debates relating to the creation of the Service Area are replete with comments such as those of Mrs. Green of Oregon, who sponsored the amendment creating the Service Area:

> The thing that it [the Service Area Amendment in the Presidential Study mandated therein] does assure is that the Capitol, the Senate and the House Office Buildings, shall *never be under the elected Mayor, the elected Council and the Appointed Chief of Police.* [emphasis added]

119 Cong. Rec. H8832 (1973); *see also* Mrs. Green's similar comments at 119 Cong. Rec. H8798 (1973); or those of Representative Broyhill:

> If this bill does give self-government to the people of the District of Columbia, there is no reason what-

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commercial activity, or any other activity carried on or engaged in for livelihood or profit."

> soever why they should have any more say or any more control over an area that could be clearly defined as exclusively for the federal use than the rest of the people in this country.

119 Cong. Rec. H8833 (1973); or those of Representative Fraser, in voicing opposition to the need for a specifically-designated Service Area:

> The point about these Federal buildings in the Federal area is that *they are already under Federal control*, and the Federal control is exercised by the Department of the Interior through the Park Service including the Mall and the monuments, through the General Services Administration in maintaining the buildings, the regular Federal buildings, and the Architect of the Capitol, who runs the Capitol and the Capitol grounds. [emphasis added]

119 Cong. Rec. H8832 (1973). As clear enunciations of the sponsors of legislation, these comments should have been given significant weight. *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976). They were ignored.

4. Problems related to an overly expansive interpretation by the District Government of its authority have already arisen and required the Federal Government to resort to litigation to prevent interference with its activities. *See, for example, District of Columbia v. United States Capitol Historical Society*, C.A.No. 81-3119, (D.D.C. 1982) (attempted taxation by the District Government of a federal instrumentality operating in the National Visitors Center). This Court should also take specific notice of *United States v. District of Columbia*, C.A. No. 81-1532, (D.D.C.-pending) in which the *House of Representatives* is challenging the authority of the District Government to tax personalty located on the exclusively federal Capitol grounds.

Thus, although this Court normally will not disturb lower court decisions concerning the import of legislation

governing the internal affairs of the District, *General Motors Corp. v. District of Columbia*, *supra*, 380 U.S. at 556, the Court of Appeals opinion in this case represents a precedent of far-reaching consequences on the scope of the authority of the District Government and the ability of the national government to operate without interference from the municipal government which it created to deal with purely local matters. This Court, in *O'Donoghue v. United States*, 289 U.S. 516 (1933), described Congressional authority granted by U.S. Constitution Art. 1, § 8, cl. 17 as:

> . . . an unqualified grant of permanent legislative power over a selected area set apart for the enduring purposes of the general Government, *to which the administration of purely local affairs is obviously subordinate and incidental.* District is not a (ephemeral) subdivision of the 'outlying dominion of the United States,' but the Capitol—the very heart—of the Union itself to be maintained as a 'permanent' abiding place of all its supreme departments, and within which the immense powers of the general government were destined to be exercised for the great and expanding population of 48 states, and for future immeasurably beyond the prophetic vision of those who design and created it. [emphasis added]

Id. at 539.

The decision below threatens to permit the District Government to raise itself well above the congressional-intended "subordinate and incidental" role of regulating municipal matters *outside* exclusively federally-owned areas in which the Federal Government has sole jurisdiction. It allows the municipal body to tax private personalty in exclusively federal enclaves, a power possessed by none of the sovereign states. It also gives judicial authorization to interpret expansively the authority of the District Government to the potential detriment of the national government.

CONCLUSION

The Petition for a Writ of Certiorari should be granted in order to preserve the exclusively federal jurisdiction over federally-owned areas within the District of Columbia.

Respectfully submitted,

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